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IN THE

Supreme Court of the United States

OCTOBER TERM, 1951.

No. 103

SWIFT & COMPANY,

Petitioner,

vs.

RECONSTRUCTION FINANCE CORPORATION,

Respondent.

PETITIONER'S REPLY BRIEF IN SUPPORT OF ITS PETITION FOR A WRIT OF CERTIORARI.

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The Scheffer Press, Inc.—ANdover 3-6850

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Respondent's brief in opposition filed in the case at bar, as well as in a companion case,[1] is predicated on a decision of the Emergency Court of Appeals in *Schluderberg-Kurdle Co.* v. *R. F. C.*, 169 F. 2d 419 (ECA, 1948), *cert. den.*, 335 U. S. 846. This was the same decision upon which the Emergency Court placed entire reliance in denying petitioner's application for oral argument and in granting respondent's motion for judgment on the pleadings. (R. 155-156.) The Emergency Court, in thus affirming the validity of respondent's Announcement No. 1, and the livestock slaughter subsidy recapture and invalidation program thereby sought to be authorized, erroneously decided federal questions of general importance to the packing industry which have not been, but should be reviewed by this Court.

[1] **The Cudahy Packing Co. v. R. F. C., No. 104, October Term, 1951.**

Reply Argument.

1. Livestock Slaughter Payments Regulation No. 10 (which incorporated by reference the provisions of its predecessor Regulation No. 3), expressly recited the various conditions which a subsidy applicant must meet before it was entitled to receive payment of the livestock slaughter production subsidy benefits provided by the Regulation and the Directives. Not one of these carefully detailed grounds of payment included directly or indirectly, the condition that not only must the livestock have been purchased and slaughtered while the regulation was in effect, but that the meats derived from such slaughter must also have been sold at a time while price controls were in effect.

Respondent, in an effort to contrive some legal formula to support its Announcement No. 1, initially argued that although the condition of payment which it sought as an afterthought to import into its Regulation No. 10 was not expressly there contained, nonetheless it was "inherent" in the livestock slaughter subsidy program and should be read into the Regulation and the Directives.

The Emergency Court of Appeals, in the *Schluderberg-Kurdle Co.* case, accepted this argument. And, respondent, in its brief in opposition to the petition for a writ of certiorari of petitioner Schluderberg-Kurdle Co., (No. 248, October Term, 1948), continuously repeated this argument as its principal claim for the legality of its livestock subsidy forfeiture program (Br., pp. 6, 8, and 10).[2]

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[2] For example, respondent stated: (Br. in No. 248, October Term, 1948, pp. 7-8) "The conclusive answer to petitioner's argument is, as set forth by the court below [i.e., The Emergency Court], that under the law and apart from the absence of any such written condition in the meat subsidy regulations, the right to claim subsidies on acount of livestock slaughtered during the period September 1, 1946, to October 14, 1946, was always subject to the **inherent condition** that the meat derived from such slaughter must be disposed of prior to the removal of price controls."

Yet, as we have pointed out (Pet., p. 10), the Emergency Court in decisions subsequent to its opinion in the *Schluderberg-Kurdle Co.* case has consistently and expressly held that it will not read "inherent" conditions into subsidy regulations, including the very regulations involved in the case at bar.[3] Furthermore, respondent now admits (as indeed it must) the readily apparent effect of these subsequent decisions of the Emergency Court (Respds. Br., *Cudahy* case, No. 104, p. 11).

A clear conflict in principle thus exists between the decision of the Emergency Court in the *Schluderberg-Kurdle Co.* case and the subsquent decisions of that court.

2. Respondent advances Section 6 (a) (4) of the Price Control Extension Act of 1946 to support its claim of validity of Announcement No. 1. (Respds. Br., *Cudahy* case, No. 104, at p. 11). The purpose, effect, and intent of this section has been previously fully discussed by petitioner. (Pet. p. 13). This section only prohibited the payment of subsidies on livestock slaughtered *after* the removal of price and related controls on livestock and commodities processed therefrom. The termination provisions of Regulation No. 10 are in full accord with this self-evident interpretation. Those provisions read as follows:

> "Such termination shall not preclude the filing of claims on account of livestock slaughtered on or before the date of termination." [*i.e.*, October 15, 1946].

3. Furthermore, as petitioner emphasized (Pet., pp. 12-14), complainant in the *Schluderberg-Kurdle Co.* case not only conceded, but actually argued, that the livestock

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[3] See e.g., **Gibbs v. R. F. C., 169 F. 2d 654 (E.C.A., 1948); Belle City Packing Co. v. R. F. C., 169 F. 2d 413 (E.C.A., 1948); and Consolidated Flour Mills Co. v. R. F. C., 177 F. 2d, 206 (E.C.A., 1949).**

subsidy was a consumer's meat subsidy rather than a producer's subsidy. The Emergency Court set forth this concession in its opinion and held it to be of decisive significance. Thus, the decision in the *Schluderberg-Kurdle Co.* case turned on an uncontested issue, despite the many reasons requiring the contrary conclusion that the livestock slaughter subsidy, as its name indicated, was a basic production subsidy. (Pet. pp. 2-7). See also *Gibbs* v. *R. F. C.*, 169 F. 2d 654 (E.C.A., 1948), decided subsequent to the *Schluderberg-Kurdle Co.* case.

Respondent, however, argues that the Emergency Court was not "misled" by complainant's concession in the *Schluderberg-Kurdle Co.* case. (Respds. Br., *Cudahy* case, No. 104, pp. 8-9). Respondent's argument may be paraphrased as follows—Although complainant's concession that the subsidy was a consumer's meat subsidy, made its position on this basic issue identical with that of respondent's, nonetheless respondent carefully reviewed all factors in respondent's favor showing the subsidy to be a consumer's meat subsidy, and therefore, the Emergency Court could not possible have been misled!

We think respondent's argument proves exactly the point petitioner stressed; namely, that the Emergency Court decided a vital issue without contest, and without having before it the many factors which require the conclusion that the subsidy was a livestock producer's subsidy, measured in terms of the live weight of the livestock slaughtered, with the express condition that the benefits of the subsidy be passed back by the slaughterer to the livestock producer. This is but another reason why the case at bar should not be controlled by the decision of the Emergency Court in the *Schluderberg-Kurdle Co.* case.

In practical effect, petitioner has not had its day in court. Its rights have been determined by a decision in a pro-

ceeding to which it was not a party, in which it did not participate and which was based upon a stipulation of an important, basic and essential factor which was controlling of the result, and which was at odds with what petitioner sincerely believes and urges was the actual fact and upon which it has not been heard.

4. Petitioner also relied on the argument that respondent's Form DSC-118 was arbitrary and capricious. (Pet., pp. 14-16). Respondent offers no substantial reasons in support of the validity of this conversion formula. Moreover, respondent has failed wholly to appreciate the significance of this formula, which respondent devised six months after the termination of the livestock subsidy program, to determine the amount of subsidy it claimed a right to forfeit pursuant to its Announcement No. 1. This artificial formula was necessitated by the fact that no records were required to be kept by Regulation No. 10 which would reflect this figure. Not only is the formula void for indefinitness, as we suggested (Pet., pp. 14-15); but the admitted absence of any provision in Regulation No. 10 requiring the keeping of such records is further persuasive evidence that this condition of payment asserted by Announcement No. 1, was never contained in Regulation No. 10.

5. This case is one of importance in that the issues affect not only the entire livestock slaughter and packing industry and the many members thereof, the processing of whose claims for livestock slaughter subsidy payments await the decision of this Court, but it will affect existing and future regulations and directives applicable to the industry and the livestock producer issued or to be issued under authority of the Defense Production Act of 1950.

CONCLUSION.

For the reasons stated, it is respectfully submitted that the general importance of the issues here involved fully merits review by this Court. The petition for a writ of certiorari should therefore be granted.

Respectfully submitted,

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